

§ 997.53 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this part, the Secretary, through its duly authorized agents, shall have access to any premises where peanuts may be held by any handler and at any time during reasonable business hours and shall be permitted to inspect any peanuts so held by such handler and any and all records of such handler with respect to the acquisition, movement, holding, processing or disposition of all peanuts which may be held or which may have been disposed of by the handler. Each handler shall maintain such records of peanuts received, held, and disposed of by the handler, that will substantiate any required reports and will show performance under this part. Such records shall be retained for at least two years beyond the crop year of their applicability.

§ 997.54 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

ASSESSMENT RATES

§ 997.101 Assessment rate.

On and after July 1, 1996, an administrative assessment rate of \$0.70 per net ton of assessable farmers stock peanuts received or acquired by each non-signatory first handler is established for peanuts.

[61 FR 35595, July 8, 1996]

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

DEFINITIONS

- Sec.
- 998.1 Secretary.
- 998.2 Act.
- 998.3 Person.

- 998.4 Area.
- 998.5 Peanuts.
- 998.6 Producer.
- 998.7 Handle.
- 998.8 Handler.
- 998.9 Crop year.
- 998.10 Production areas.
- 998.11 Area association.

PEANUT ADMINISTRATIVE COMMITTEE

- 998.15 Establishment and membership.
- 998.16 Eligibility.
- 998.17 Term of office.
- 998.18 Initial committee.
- 998.19 Nomination.
- 998.20 Selection.
- 998.21 Failure to nominate.
- 998.22 Qualify by acceptance.
- 998.23 Alternate members.
- 998.24 Vacancies.
- 998.25 Compensation and expenses.
- 998.26 Procedure.
- 998.27 Powers.
- 998.28 Duties.

MARKETING POLICY

- 998.30 Marketing policy.

QUALITY REGULATION

- 998.31 Incoming regulation.
- 998.32 Outgoing regulation.
- 998.33 Inspection, certification and identification.
- 998.34 Modification.
- 998.35 Above parity situations.
- 998.36 Indemnification.

REPORTS, BOOKS AND RECORDS

- 998.40 Confidential information.
- 998.41 Reports of acquisitions and shipments.
- 998.42 Other reports.
- 998.43 Records.
- 998.44 Verification of reports.

EXPENSES AND ASSESSMENTS

- 998.47 Expenses.
- 998.48 Assessments.

MISCELLANEOUS PROVISIONS

- 998.50 Rights of the Secretary.
- 998.51 Personal liability.
- 998.52 Separability.
- 998.53 Derogation.
- 998.54 Duration of immunities.
- 998.55 Agents.
- 998.56 Effective time.
- 998.57 Suspension or termination.
- 998.58 Procedure upon termination.
- 998.59 Effect of termination or amendment.
- 998.60 Counterparts.
- 998.61 Additional parties.

IMPLEMENTING REGULATIONS

- 998.100 Incoming quality regulation for 1995 and subsequent crop peanuts.

Agricultural Marketing Service, USDA

§ 998.8

998.200 Outgoing quality regulation for 1995 and subsequent crop peanuts.

998.300 Terms and conditions of indemnification for 1996 and subsequent crop peanuts.

ASSESSMENT RATES

998.409 Assessment rate.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 53 FR 20291, June 3, 1988, unless otherwise noted.

DEFINITIONS

§ 998.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his stead.

§ 998.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 998.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 998.4 Area.

Area means all States with commercial production of peanuts and includes the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Arkansas, Tennessee, Missouri, Louisiana, Oklahoma, Texas, New Mexico, Arizona, and California.

§ 998.5 Peanuts.

Peanuts means the seeds of the legume *arachis hypogaea* and includes both inshell and shelled other than those marketed by the producer in green form for consumption as boiled peanuts.

(a) *Farmers Stock*. *Farmers stock peanuts* means picked and threshed peanuts which have not been shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels and excess mois-

ture) from the form in which customarily marketed by producers.

(b) *Segregation 1*. *Segregation 1 peanuts* means farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold or decay.

(c) *Segregation 2*. *Segregation 2 peanuts* means farmers stock peanuts with more than 2 percent but not more than 4 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold or decay.

(d) *Segregation 3*. *Segregation 3 peanuts* means farmers stock peanuts with more than 4 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold or decay.

(e) The definitions set forth in paragraphs (b), (c), and (d) of this section may be modified by the Secretary pursuant to § 998.34.

§ 998.6 Producer.

Producer means any person engaged within the area in a proprietary capacity in the production of peanuts for sale.

§ 998.7 Handle.

Handle means to engage in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce: *Provided*, That this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and *Provided further*, That this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

§ 998.8 Handler.

Handler means any person who handles peanuts, in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman or other intermediary between the producer and the person handling, and who is a party to this agreement.

§ 998.9 Crop year.

Crop year is synonymous with *fiscal year* and means the 12-month period beginning with July 1 of any year and ending with June 30 of the following year.

§ 998.10 Production areas.

Production areas mean (a) The Southeastern Area consisting of the States of Alabama, Florida, Georgia, Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(b) The Southwestern Area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(c) The Virginia-Carolina Area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

§ 998.11 Area association.

Area association means for the Southeastern area, GFA Peanut Association, Camilla, Georgia; Southwestern area, Southwestern Peanut Growers Association, Gorman, Texas; and Virginia-Carolina area, Peanut Growers Cooperative Marketing Association, Franklin, Virginia.

PEANUT ADMINISTRATIVE COMMITTEE

§ 998.15 Establishment and membership.

A Peanut Administrative Committee (hereinafter referred to as committee) is hereby established to administer the terms and provisions of this agreement. Such committee shall consist of 18 members of whom 9 shall represent producers and 9 shall represent handlers. The producer representation shall be 3 for the Southeastern area, 3

for the Southwestern area, and 3 for the Virginia-Carolina area of which one of the 3 in each production area shall represent the respective area association. The handler representation shall also be 3 for each of the designated areas. For each member there shall be an alternate member.

§ 998.16 Eligibility.

Each producer member of the committee and alternate member, shall be, at the time of his selection and during his term of office, a producer, or an officer or employee of an area association, in the area for which selected and shall cease to be a member or alternate upon engaging in the handling of peanuts either in a proprietary capacity or as a director, officer, or employee of other than a cooperative association. Each handler member of the committee, and his alternate, shall be, at the time of his selection, a handler or an officer or employee of a handler in the area for which selected and shall throughout his term of office so continue to be a handler.

§ 998.17 Term of office.

Members and alternate members of the committee shall serve for terms of 3 years ending on April 30 but initial members and alternates shall be selected for terms of 1, 2, or 3 years so that one-third of the producer and handler representatives in each area may be replaced each year. Each member and alternate member shall continue to serve until his successor is selected and has qualified.

§ 998.18 Initial committee.

The initial members of the committee and their respective alternates shall be as follows:

Southeastern area:

Producers	Member	Alternate member	Term of office years
Area Assn	D.H. Harden	W.G. Miller	3
At Large	James E. Mobley	T. Lewis Knox	2
At Large	Emmett Reynolds	Billy Newberry	1
Handlers	Member	Alternate member	
	Don W. Sands	Tom Chandler	3
	James Anderson	J.B. Roberts	2
	R.C. Singletary, Jr.	Robert Pender	1

Agricultural Marketing Service, USDA

§ 998.24

Southwestern area:

Producers	Member	Alternate member	
Area Assn	Ross Wilson	B.D. Green	3
At Large	D.B. Warren	E.A. Walker	2
At Large	Barton Scott	Jesse Leach	1
Handlers	Member	Alternate member	
	John Haskins	Pat Cagle	3
	Melvin Shell	Ellis L. Ganey	2
	John Burroughs	R.L. Borden	1

Virginia-Carolina area:

Producers	Member	Alternate member	
Area Assn	S. Womack Lee	J.F. Turner, Sr	3
At Large	Joe S. Sugg	Minton Beach, Jr	2
At Large	Wm. V. Rawlings	G.B. Ligon	1
Handlers	Member	Alternate member	
	H.R. Birdsong	W.J. Spain, Jr.	3
	T.J. White	W.P. Woodley	2
	B.E. Parker	William D. Shaw	1

§ 998.19 Nomination.

Producers and handlers may nominate their successor representatives to those named in § 998.18 at meetings held in each area except that each area association representative shall be nominated by the association. The committee shall hold and shall give reasonable publicity to nomination meetings and may use the respective area associations to convene meetings of the producers. Only persons eligible to serve shall be eligible to vote. Each producer and each handler shall have but one vote, but a handler may vote in each production area in which he is a handler and if engaged in peanut production, may vote in his capacity as a producer. The person receiving the largest number of the votes cast for a position shall be the nominee. All nominations shall be certified by the committee to the Secretary no later than April 5 preceding the commencement of the term of office.

§ 998.20 Selection.

The Secretary shall select successor producer and handler members and alternate members of the committee in the numbers and with the qualifications specified in this agreement. Such selections may be made from the nominations certified by the committee or

from other eligible producers and handlers.

§ 998.21 Failure to nominate.

In the event a nominee for any member or alternate member position is not certified pursuant to and within the time specified, the Secretary may select an eligible person to fill such position without regard to nomination.

§ 998.22 Qualify by acceptance.

Each person selected by the Secretary as a member or as an alternate member shall, prior to serving, qualify by filing with the Secretary a written acceptance as soon as practicable after being notified of such selection.

§ 998.23 Alternate members.

An alternate for a member shall act in the place and stead of such member:

- (a) During his absence, or
- (b) In the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified.

§ 998.24 Vacancies.

Any vacancy occasioned by the removal, resignation, disqualification, or death of any member or alternate, or any need to select a successor through failure of any person selected as a

member or alternate member to qualify, and which is not recognized by the committee certifying to the Secretary a new nominee within 40 calendar days, may be filled pursuant to § 998.21.

§ 998.25 Compensation and expenses.

The members of the committee, and the alternate members when acting as members, shall serve without compensation but shall be allowed their necessary expenses, actual or per diem as approved by the committee.

§ 998.26 Procedure.

All decisions of the committee reached at an assembled meeting shall be by majority vote of the members present except that a change of a quality regulation shall require approval of 75 percent of the members. Meetings, or portions of meetings, concerned with marketing policy or quality regulation shall be open to all members of the peanut industry. All votes in an assembled meeting shall be cast in person and a quorum must be present for a valid decision. A quorum shall consist of not less than 50 percent of the producer members and 50 percent of the handler members. The committee may vote by mail or telegram upon due notice to all members, but any proposition so voted upon first shall be explained accurately, fully, and identically by mail or telegram, to all such members. When any proposition is submitted to be voted on by such method, one dissenting vote shall prevent its adoption. Failure of any member, or alternate acting for a member, to vote within a prescribed time shall be held to be a dissenting vote.

§ 998.27 Powers.

The committee shall have the following powers:

- (a) To administer the agreement in accordance with its terms and provisions;
- (b) To receive, investigate, and report to the Secretary, complaints of violations of this agreement; and
- (c) To recommend to the Secretary amendments to this agreement.

§ 998.28 Duties.

The committee shall have the following duties:

(a) To act as intermediary between the Secretary and any producer or handler;

(b) To keep minutes, books, and other records which shall clearly reflect all of its acts and transactions and these shall be subject to examination by the Secretary at any time;

(c) To investigate and assemble data on the production, handling, and marketing of peanuts;

(d) To submit to the Secretary such available information with respect to peanuts as he may request and such other information as the committee may deem desirable and pertinent;

(e) To select from among its members a chairman and other officers and to adopt such by-laws for the conduct of its business as it may deem advisable;

(f) To appoint or employ such persons as it may deem necessary and to determine the salaries and define the duties of each such person;

(g) To cause the books of the committee to be audited by a certified public accountant at least once each crop year and at such other times as the committee may deem necessary or as the Secretary may request, to submit two copies of each such audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers;

(h) To prepare and submit to the Secretary quarterly statements of the financial operations of the committee and to make such statements together with the minutes of the meetings of said committee available for inspection at the offices of the committee by producers and handlers;

(i) To give the Secretary the same notice of meetings of the committee as is given to members;

(j) To investigate compliance with and to use means available to the committee to prevent violation of the provisions of this agreement; and

(k) To establish with the approval of the Secretary such rules and regulations as are necessary or incidental to administration of this agreement, as are consistent with its provisions, and as would tend to accomplish the purposes of this agreement and the act.

MARKETING POLICY

§ 998.30 Marketing policy.

Prior to May 31, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy covering quality regulations for the pending crop. In the event it becomes advisable to modify such policy, because of changed conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. In developing the marketing policy, the committee shall give consideration to the production, harvesting and storage conditions, probable quality of crop, grading and treatment methods, inspection capability, demand for peanuts in domestic and foreign markets, the basis of handler indemnification, the probable assessable tonnage for the purposes of § 48 and such other factors as may have a bearing on the peanut quality regulation or the administration of this agreement. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity, to producers and handlers.

QUALITY REGULATION

§ 998.31 Incoming regulation.

No handler shall receive or acquire peanuts, either from a producer or other person, unless such peanuts were determined pursuant to § 998.33 to be Segregation 1 peanuts at time of receipt from the producer or, if received from another person, had not been mixed with peanuts of a lower quality than Segregation 1: *Provided*, That a handler may.

(a) Receive or acquire and deliver for seed purposes farmers stock peanuts with not more than 3 percent damaged kernels nor more than 10 percent moisture if such peanuts were produced under the auspices of a State agency which regulates or controls the production of seed peanuts;

(b) Acquire shelled peanuts from the Commodity Credit Corporation (CCC) or cleaned inshell or shelled peanuts from handlers subject to this agreement, or from buyers who have purchased such peanuts from such handlers or from CCC, if the lot has been

certified as meeting the requirements of § 998.32(a) and the identity is maintained;

(c) Perform services for an area association pursuant to a peanut receiving and warehouse contract; and

(d) If a crusher, acquire peanuts of a lower quality than Segregation 1 as oil stock upon such conditions as the committee, with the approval of the Secretary, may prescribe.

Segregation 2 peanuts which are wholesome relative to mold damage may be acquired from peanuts held by CCC or an area association when released by the Secretary as needed to fill demand. In the situation of § 998.35, the Secretary may authorize handlers to acquire Segregation 2 peanuts from producers or intermediaries. The acquisition of loose shelled kernels or their removal from farmers stock peanuts shall be in accordance with such procedures as the committee, with the approval of the Secretary, may establish.

§ 998.32 Outgoing regulation.

(a) No handler shall dispose of for human consumption, peanuts which fail to meet such U.S. grade requirements, or modifications thereof, or requirements as to wholesomeness as the committee, with the approval of the Secretary, may specify including the tolerance for moldy peanuts, time in storage, or other pertinent factors. No inspection certificate issued pursuant to § 998.33 shall be effective if unacceptable to the committee or for more than such period of time as the committee, with the approval of the Secretary, may prescribe. Peanuts which fail to meet the requirements specified pursuant to this section shall be disposed of by delivery to the Commodity Credit Corporation or in such manner as may be prescribed by the committee with the approval of the Secretary.

(b) Notwithstanding the restrictions contained in this section, and handler may transfer peanuts from one plant owned by him to another plant owned by him or to commercial storage without having an inspection made as provided for in § 998.33. No such transfers shall be made except in accordance with such procedures as the committee, with the approval of the Secretary, may prescribe for movement within

§ 998.33

each production area, to another production area or to points outside thereof.

§ 998.33 Inspection, certification and identification.

Each handler shall, at his own expense, prior to or upon receiving and before shipping or disposing of peanuts, cause an inspection to be made of any such peanuts not covered by a valid inspection certificate, to determine whether they meet the applicable grade requirements effective pursuant to this agreement and shall comply with such identification requirements as the committee, with the approval of the Secretary, may prescribe. Such handler shall obtain a certificate that such peanuts meet the aforementioned applicable requirements and all such certificates shall be available for examination or use by the committee. Acceptable certificates shall be those issued by Federal or Federal-State inspectors authorized or licensed by the Secretary.

§ 998.34 Modification.

The requirements of §§ 998.31 and 998.32 and definitions set forth in § 998.5, (b), (c), and (d) may be modified by the Secretary, upon recommendation of the committee or other information, whenever he finds that such modification would tend to effectuate the objectives of this agreement.

§ 998.35 Above parity situations.

Minimum standards established under §§ 998.31 and 998.32, the grading and inspection requirements, and the provisions of this agreement relating to administration and indemnification shall continue in effect irrespective of whether or not the estimated season average price for peanuts is in excess of the parity level specified in section 2(1) of the Act.

§ 998.36 Indemnification.

The committee shall, upon such terms and conditions as it may establish with the approval of the Secretary, indemnify any handler, to the extent specified, for losses incurred by him on peanuts which have been milled for sale for human consumption and which meet the applicable grade and other re-

7 CFR Ch. IX (1-1-97 Edition)

quirements but which are determined by the committee or the U.S. Food and Drug Administration to be unsuitable for human consumption because of aflatoxin including such peanuts returned, resold or rejected to a handler by a purchaser. Any peanuts for which the handler is indemnified pursuant to this paragraph shall be delivered to the committee or disposed of as the committee may direct. Funds for such indemnification shall be obtained pursuant to § 998.48. The period of indemnification on any crop may extend to December 31 of the calendar year following the year in which the crop was produced.

[53 FR 20294, June 3, 1988; 54 FR 227, Jan. 4, 1989]

REPORTS, BOOKS AND RECORDS

§ 998.40 Confidential information.

All reports and records furnished or submitted by handlers to the committee which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handlers or their customers shall be received by, and at all times kept in the custody and under the control of, one or more employees of the committee, who shall disclose such information to no person except the Secretary. Notwithstanding the above provisions of this section, information may be disclosed to the committee when reasonably necessary to enable the committee to carry out its functions under this agreement.

§ 998.41 Reports of acquisitions and shipments.

Each handler shall file such reports of his acquisitions and shipments of peanuts, as may be requested by the committee.

§ 998.42 Other reports.

Upon the request of the committee, with the approval of the Secretary, each handler shall furnish such other reports and information as are needed to enable the committee to perform its functions under this agreement.

§ 998.43 Records.

Each handler shall maintain such records of peanuts received, held and disposed of by him, as will substantiate any required reports and will show performance under this agreement. Such records shall be retained for at least 2 years beyond the crop year of their applicability.

§ 998.44 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this agreement, the Secretary and the committee, through its duly authorized agents, shall have access to any premises where peanuts may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any peanuts so held by such handler and any and all records of such handler with respect to the acquisition, holding, or disposition of all peanuts which may be held or which may have been disposed of by him.

EXPENSES AND ASSESSMENTS

§ 998.47 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each crop year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this agreement, determine to be appropriate.

§ 998.48 Assessments.

(a) Each handler shall pay to the committee, upon demand, with respect to peanuts received by him, including his own production, his pro rata share of all expenses, indemnification and other, which the Secretary finds are reasonable and likely to be incurred by the committee during each crop year. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary per net ton of farmers stock peanuts received or acquired other than those peanuts described in § 998.31 (c) and (d). During a crop year the Secretary may not increase the rate of assessment to cover a deficit in the indemnification fund but may assess for

a deficit in a subsequent year. An assessment rate may be increased to cover a deficit in the administrative fund.

(b) In order to provide funds to carry out the functions of the committee, the committee may borrow money or may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against the respective handler.

(c) *Indemnification reserve.* The committee, with the approval of the Secretary, may establish and maintain during one or more crop years a monetary reserve in an amount approximating anticipated expenses for indemnification pursuant to § 998.36.

(d) *Refunds.* Administrative funds held by the committee at the conclusion of the crop year in excess of the crop year's expenses, other than indemnification funds, may be used to defray expenses for no more than the ensuing four months, and thereafter within a reasonable time the committee shall credit the aforesaid administrative excess to handlers who contributed to such excess: *Provided,* That the excess due any handler shall be applied, in whole or in part, by the committee to any outstanding obligation due the committee from such handler. Should any handler discontinue handling peanuts, such excess shall be refunded to him. A handler's share of such excess funds shall be the amount of such assessments he paid in excess of his actual pro rata share of the administrative expenses of the committee. Upon termination of this agreement any indemnification money in possession of the committee shall be turned over to any successor committee or disposed of, with the approval of the Secretary, for projects of benefit to the peanut industry and any residual together with any administrative money shall be distributed in such manner as the Secretary may direct: *Provided,* That, to the extent practicable, such residual funds shall be returned pro rata to the persons from whom collected.

MISCELLANEOUS PROVISIONS

§ 998.50 Rights of the Secretary.

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary, in his discretion, at any time. Each and every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 998.51 Personal liability.

No member or alternate member of the committee, nor any employee, representative, or agent of the committee shall be held personally responsible to any handler, either individually, or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty.

§ 998.52 Separability.

If any provision of this agreement is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 998.53 Derogation.

Nothing contained in this agreement is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 998.54 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this agreement shall cease upon its termination, except with respect to acts done under and during the existence thereof.

§ 998.55 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this agreement.

§ 998.56 Effective time.

The provisions of this agreement, as well as any amendments, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 998.57.

§ 998.57 Suspension or termination.

(a) *Failure to effectuate policy of act.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this agreement, whenever he finds that such provisions do not tend to effectuate the declared policy of the act. Moreover, if the provisions of the CCC price support program relating to purchases from shellers are discontinued, or change appreciably, consideration shall be given to termination of this agreement.

(b) *Referendum.* The Secretary shall terminate, in accordance with section 8c(16)(B) of the Act, the provisions of this agreement at the end of any crop year whenever he finds that such termination is favored by a majority of the producers of peanuts who during the crop year have been engaged in the production of peanuts for market: *Provided*, That such majority have during such period produced for market more than 50 percent of the volume of such peanuts produced for market within the area, but such termination shall be effective only if announced on or before June 1 of the then current crop year.

(c) *Termination of Act.* The provisions of this agreement shall terminate, in any event, whenever the provisions of the act authorizing them cease to be in effect.

§ 998.58 Procedure upon termination.

Upon the termination of this agreement, the members of the committee then functioning shall continue as

joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustees shall require the concurrence of a majority of said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such persons as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this agreement. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon said joint trustees.

§ 998.59 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this agreement or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

- (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise, in connection with any provisions of this agreement or any regulation issued thereunder, or
- (b) Release or extinguish any violation of this agreement or any regulation issued thereunder, or
- (c) Affect or impair any rights or remedies of the Secretary, or of any other persons, with respect to such violation.

§ 998.60 Counterparts.

This agreement may be executed in multiple counterparts and, when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 998.61 Additional parties.

After the effective date of this agreement, any handler may become a party hereto if a counterpart is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary and such party has complied with assessment obligations and the quality regulations applicable to the current crop. The benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting part.

IMPLEMENTING REGULATIONS

§ 998.100 Incoming quality regulation for 1995 and subsequent crop peanuts.

The following modify § 998.5 of the peanut marketing agreement and modify or are in addition to the restrictions of section 31 on handler receipts or acquisitions of peanuts:

(a) *Modification of § 998.5, paragraphs (b), (c), and (d).* Paragraphs (b), (c), and (d) of § 998.5 of the peanut marketing agreement are modified for the purposes of this section as to farmers' stock peanuts to read respectively as follows:

(b) *Segregation 1. Segregation 1 peanuts* means farmers' stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*.

(c) *Segregation 2. Segregation 2 peanuts* means farmers' stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*.

(d) *Segregation 3. Segregation 3 peanuts* means farmers' stock peanuts with visible *Aspergillus flavus*.

(b) *Moisture and foreign material.*

(1) *Moisture.* Except as provided under paragraph (e), *Seed Peanuts*, no handler shall receive or acquire peanuts containing more than 10.49 percent moisture: *Provided*, That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling. On farmer's stock, such moisture determinations shall be rounded to the

nearest whole number; or shelled peanuts, the determinations shall be carried to the hundredths place and shall not be rounded to the nearest whole number.

(2) *Foreign material.* No handler shall receive or acquire farmers' stock peanuts containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are held separately until milled, or moved over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term *sand-screen* means any type of farmers' stock cleaner which, when in use, removes sand and dirt.

(c) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers' stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(d) *Loose shelled kernels.* (1) No handler shall receive or acquire farmers' stock peanuts containing more than 14.49 percent loose shelled kernels, except that peanuts having a higher loose shelled kernel content may be received or acquired if they are held separately until milled or shipped directly to a plant for prompt shelling. All percentage determinations shall be rounded to the nearest whole number. Handlers may separate from the loose shelled kernels received with farmers' stock peanuts those sizes of kernels which ride screens with the following or larger slot openings: Runner— $\frac{16}{64} \times \frac{3}{4}$ inch; Spanish and Valencia— $\frac{15}{64} \times \frac{3}{4}$ inch; Virginia— $\frac{15}{64} \times 1$ inch. If so separated, those loose shelled kernels which ride the screens may be included with shelled peanuts prepared by the handler for inspection and sale for human consumption: *Provided*, That no more than 5 percent of such loose shelled kernels are kernels which would fall through screens with such minimum prescribed openings. Those loose shelled kernels which do not ride the screens shall be removed from the farmers' stock peanuts and shall be held separate and apart from other peanuts and disposed of for inedible use as provided in paragraph (g) of the outgoing quality regulation. If the kernels which ride the prescribed screens are not separated from the kernels which

do not ride the prescribed screens, the entire amount of loose shelled kernels shall be removed from farmers' stock peanuts and shall be so held and so delivered or disposed of. For the purpose of this regulation, the term *loose shelled kernels* means peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers' stock peanuts.

(2) Each handler shall be required to submit to the Committee a flow chart for each plant operation diagramming the procedures and equipment used in the removal of loose shelled kernels and in the processing of splits. Upon any subsequent changes in flow, procedures, or equipment, the handler shall submit to the Committee a revised flow chart reflecting those changes.

(e) *Seed peanuts.* A handler may acquire and deliver for seed purposes farmers' stock peanuts which meet the requirements of Segregation 1 peanuts. If the seed peanuts are produced under the auspices of a State agency which regulates or controls the production of seed peanuts, they may contain up to 3 percent damaged kernels and have visible *Aspergillus flavus*, and, in addition, the following moisture content, as applicable:

(1) For such seed peanuts produced in the Southeastern and Virginia-Carolina areas, they may contain up to 10.49 percent moisture except Virginia type peanuts which are not stacked at harvest time may contain up to 11.49 percent moisture; and

(2) For seed peanuts produced in the Southwestern area, they may contain up to 10.49 percent moisture.

However, any such seed peanuts with visible *Aspergillus flavus* shall be stored and shelled separate from other peanuts, and any residual not used for seed shall not be used or disposed of for human consumption unless it is determined to be wholesome by chemical assay for aflatoxin. A handler whose operations include custom seed shelling may receive, custom shell, and deliver for seed purposes farmers' stock peanuts, and such peanuts shall be exempt from the Incoming Quality Regulation requirements and, therefore, shall not be required to be inspected and certified as meeting the Incoming Quality Regulation requirements, and

the handler shall report to the Committee as requested the weight of each lot of farmers' stock peanuts received on such basis on a form furnished by the Committee. However, handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers' stock) seed peanuts or from another sheller or producer who has or has not signed the marketing agreement shall hold and/or mill such residuals separate and apart from other receipts or acquisitions of the handler, and such residuals which meet Outgoing Quality Regulation requirements may be disposed of by sale to human consumption outlets, and any portion not meeting such requirements shall be disposed of by sale as peanuts failing to meet human consumption requirements pursuant to paragraph (i) of the Outgoing Quality Regulation (§998.200). Seed peanuts, produced under the auspices of the State agency, which contain up to 3 percent damaged kernels and are free from visible *Aspergillus flavus*, may be stored and shelled with Segregation I seed peanuts which are also produced under the auspices of the State agency.

(f) *Oilstock*. Handlers may acquire for disposition to domestic crushing or export to countries other than Canada and Mexico farmers' stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. The provision of §998.31 of the marketing agreement restricting acquisitions of such peanuts to handlers who are crushers is hereby modified to authorize all handlers to act as accumulators and acquire, from other handlers or non-handlers, Segregation 2 or 3 farmers' stock peanuts. Handlers may also acquire from other handlers shelled or fragmented peanuts originating from Segregation 2 or 3 farmers' stock or the entire mill production of shelled or fragmented peanuts from Segregation 1 farmers' stock or lots of shelled peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in paragraph (d) of the Outgoing Quality Regulation (§998.200) which failed to meet the requirements for human consumption pursuant to paragraph (a) of

the Outgoing Quality Regulation (§998.200): *Provided*, That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart as provided in paragraph (j) of the Outgoing Quality Regulation (§998.200). Further disposition or commingling of such peanuts shall be only as provided in paragraph (l) of the Outgoing Quality Regulation (§998.200). Handlers who acquire farmers' stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions as prescribed by the Committee. To be eligible to receive or acquire Segregation 2 or 3 farmers' stock peanuts and shelled or "fragmented" peanuts originating therefrom, a handler shall pay to the Area Association a fee for the purpose of covering cost of supervision of the disposition of such peanuts.

(g) *Segregation 2 and 3 control*. To assure the removal from edible outlets of any lot of peanuts determined by Federal or Federal-State Inspection Service to be Segregation 2 or Segregation 3, each handler shall inform each employee, country buyer, commission buyer, or like person through whom the handler receives peanuts of the need to receive and withhold all lots of Segregation 2 and Segregation 3 peanuts from milling for edible use. If any lot of Segregation 2 or Segregation 3 farmers' stock peanuts is not withheld but returned to the producer, the handler shall cause the Inspection Service to forward immediately a copy of the inspection certificate on the lot to the designated office of the handler and a copy to the Committee which shall be used only for information purposes.

(h) *Farmers' stock storage and handling facilities*. Handlers shall report to the Committee, on a form furnished by the Committee, all storage facilities or contract storage facilities which they will use to store acquisitions of current crop Segregation 1 farmers' stock peanuts, and all such storage facilities must be reported prior to storing of

any such handler acquisitions. Handlers shall also report to the Committee the locations at which they will receive or acquire current crop farmers' stock peanuts. All such storage facilities shall have reasonable and safe access to allow for inspection of the facility and its contents. All such storage facilities must be of sound construction, in good repair, and built and equipped so as to provide suitable storage and sufficient safeguards to prevent moisture condensation and provide adequate protection for farmers' stock peanuts. All breaks or openings in the walls, floors, or roofs of the facilities shall have been repaired so as to keep out moisture. Elevator pits and wells must be kept dry and free of moisture at all times. Insect control procedures must be carried out in such a manner as to prevent undesirable moisture in the storage facilities. Any conditions in warehouses, elevators, pits, transportation equipment, including trucks and hopper cars, and other farmers' stock handling equipment conducive to the growth or spread of *Aspergillus flavus* mold shall be corrected to the satisfaction of the Committee. The Committee may make periodic inspections of farmers' stock storage and handling facilities and farmers' stock peanuts stored in such facilities to determine if handlers are adhering to these requirements.

(i) *Shelled peanuts*. Handlers may acquire from other handlers, for remilling and subsequent disposition to human consumption outlets, shelled peanuts which originated from "Segregation 1 peanuts." Transactions made in this manner shall be reported to the Committee by both the buyer and the seller on a form provided by the Committee. Further disposition of any such peanuts acquired pursuant to this paragraph shall be regulated by paragraph (h)(1) of § 998.200 Outgoing quality regulation.

(j) *Inedible quality shelled peanuts for disposition to animal feed*. Handlers may receive or acquire from other handlers, for further milling and/or processing and subsequent disposition for use as domestic animal feed, shelled peanuts that fail to meet the requirements specified for human consumption in paragraph (a) of the Outgoing Quality Regulation (§ 998.200). Any lot of such peanuts received or acquired for such further disposition shall be positive lot identified and covered by a valid grade inspection certificate issued by a Federal or Federal-State Inspector. Transactions made in this manner shall be reported to the Committee by both the buyer and seller on a form provided by the Committee. Peanuts received and covered by a valid grade inspection certificate issued by a Federal or Federal-State apart from peanuts destined to human consumption outlets and further disposition shall be regulated as provided for in paragraph (m)(2) of the Outgoing Quality Regulation. Peanuts acquired pursuant to this paragraph shall be held, milled, and/or processed separate and apart from peanuts destined to human consumption outlets and further disposition shall be regulated as provided for in paragraph (m)(2) of the Outgoing Quality Regulation (§ 998.200).

[53 FR 20291, June 3, 1988, as amended at 53 FR 26757, July 15, 1988; 55 FR 34511, Aug. 23, 1990; 59 FR 36354, July 18, 1994; 60 FR 36208, July 14, 1995]

§ 998.200 Outgoing quality regulation for 1995 and subsequent crop peanuts.

The following modify or are in addition to the peanut marketing agreement restrictions of § 998.32 on handler disposition of peanuts:

(a) *Shelled peanuts*. No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless such peanuts are Positive Lot Identified and certified as meeting the following requirements:

"OTHER EDIBLE QUALITY" (NON-INDEMNIFIABLE) GRADES—WHOLE KERNELS AND SPLITS

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign material (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total (percent)		
Maximum Limitations (excluding lots of "splits")							
Runner	1.50	2.50	3.00 17/64 inch round screen ...	3.00 15/64 x 3/4 inch slot screen	4.00 Both screens .....	.20	9.00
Virginia (except No. 2)	1.50	2.50	3.00 17/64 inch round screen ...	3.00 15/64 x 1 inch slot screen	4.00 Both screens .....	.20	9.00
Spanish and Valencia	1.50	2.50	3.00 19/64 inch round screen ...	3.00 15/64 x 3/4 inch slot screen	4.00 Both screens .....	.20	9.00
No. 2 Virginia	1.50	3.00	6.00 17/64 inch round screen ...	6.00 15/64 x 1 inch slot screen	6.00 Both screens .....	.20	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels).	1.50	2.50	3.00 17/64 inch round screen ...	3.00 15/64 x 3/4 inch slot screen	4.00 Both screens .....	.20	9.00
Virginia (not less than 90% splits)	1.50	2.50	3.00 17/64 inch round screen ...	3.00 15/64 x 1 inch slot screen	4.00 Both screens .....	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	1.50	2.50	3.00 19/64 inch round screen ...	3.00 13/64 x 3/4 inch slot screen	4.00 Both screens .....	.20	9.00

§ 998.200

7 CFR Ch. IX (1-1-97 Edition)

Peanuts meeting the foregoing specifications must also be certified “negative” as to aflatoxin, prior to shipment, unless they are certified as

meeting the following requirements which are applicable to indemnifiable grades:

INDEMNIFIABLE GRADES
MAXIMUM LIMITATIONS

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign material (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total (percent)		
Runner U.S. No. 1 and better	1.25	2.00	3.00	3.00	4.00 .....	.10	9.00
Virginia U.S. No. 1 and better	1.25	2.00	$\frac{1}{16}$ inch round screen ..	$\frac{1}{16}$ x $\frac{3}{4}$ inch slot screen ..	Both screens .....	.10	9.00
Spanish and Valencia U.S. No. 1 and better ...	1.25	2.00	$\frac{1}{16}$ inch round screen ..	$\frac{1}{16}$ x 1 inch slot screen ..	Both screens .....	.10	9.00
Runner U.S. Splits (not more than 4% sound whole kernels).	1.25	2.00	3.00	2.00	Both screens .....	.20	9.00
Virginia U.S. Splits (not less than 90% splits and not more than 3.00% sound whole kernels and portions passing through $\frac{1}{16}$ inch round screen).	1.25	2.00	$\frac{1}{16}$ inch round screen ..	$\frac{1}{16}$ x $\frac{3}{4}$ inch slot screen ..	Both screens .....	.20	9.00
Spanish and Valencia U.S. splits (not more than 4% sound whole kernels).	1.25	2.00	3.00	3.00	Both screens .....	.20	9.00
Runner with splits (not more than 15% sound splits).	1.25	2.00	$\frac{1}{16}$ inch round screen ..	$\frac{1}{16}$ x 1 inch slot screen ..	Both screens .....	.10	9.00
Virginia with splits (not more than 15% sound splits).	1.25	2.00	3.00	2.00	Both screens .....	.10	9.00
Spanish and Valencia with splits (not more than 15% sound splits).	1.25	2.00	$\frac{1}{16}$ inch round screen ..	$\frac{1}{16}$ x $\frac{3}{4}$ inch slot screen ..	Both screens .....	.10	9.00

The term *fall through*, as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Prior to shipment, appropriate samples for pre-testing shall be drawn in accordance with paragraph (c) of the Outgoing Quality Regulation from each lot of indemnifiable grade peanuts. The lot size of edible quality shelled peanuts, in bulk or bags, shall not exceed 200,000 pounds.

(b) *Cleaned inshell peanuts.* No handler shall ship or otherwise dispose of cleaned inshell peanuts for human consumption: (1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by laboratories approved by the Committee or by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") and found to be wholesome relative to aflatoxin; (2) with more than 2.00 percent peanuts with damaged kernels; (3) with more than 10.00 percent moisture; or (4) with more than 0.50 percent foreign material. The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Pretesting shelled peanuts.* Each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as "Sample #1," "Sample #2," and "Sample #3" and each sample shall be placed in a suitable container and "positive lot identified" by means acceptable to the Inspection Service and the Committee. Sample #1 may be prepared for immediate testing or Sample #1, Sample #2, and Sample #3 may be returned to the handler for testing at a later date. However, before shipment of the lot to the buyer (receiver), the handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service or a USDA or designated lab-

oratory in a "subsampling mill" approved by the Committee. The resultant ground subsample from Sample #1 shall be of a size specified by the Committee and be designated as "Subsample 1-AB" and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1. It shall be designated as "Subsample 1-CD." Subsample 1-CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a laboratory listed on the most recent Committee list of approved laboratories that can provide analyses results on such samples in 36 hours. Subsample 1-AB shall be analyzed only in USDA or designated laboratories. Both Subsamples 1-AB and 1-CD shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Committee office.

(2) The samples designated as Sample #2 and Sample #3 shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1 are known. Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #2 to be ground by the Inspection Service in a "subsampling mill." The resultant ground Subsample from Sample #2 shall be of the size specified by the Committee and it shall be designated as "Subsample 2-AB." Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #3 to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #3 shall be of the size specified by the Committee and it shall be designated as "Subsample 3-AB." Subsamples 2-AB and 3-AB shall be analyzed only in USDA or designated laboratories and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Committee office and the cost of delivery of Subsamples 2-AB and 3-AB to the laboratory and the cost of assay

on them shall be at the Committee's expense.

(3) All costs involved in sampling and testing Subsample 1-CD shall be for the account of the buyer of the lot and at the buyer's expense. However, if the handler elects to pay any portion of these cost the handler shall charge the buyer accordingly. Aflatoxin sampling and testing cost for the AB Subsamples shall be included as a separate item in the handler's invoice to the buyer at the rate of \$0.0027 per pound or \$0.27 per hundredweight of the peanuts covered by the invoice. When any of the samples or subsamples have been lost, misplaced, or spoiled and replacement samples are needed, the entire cost of drawing the replacement samples shall be for the account of the handler. The results of each assay shall be reported to the buyer listed on the notice of sampling and, if the handler desires, to the handler. If a buyer is not listed on the notice of sampling, the results of the assay shall be reported to the handler, who shall promptly cause notice to be given to the buyer of the contents thereof, and such handler shall not be required to furnish additional samples for assay.

(4) For the current crop year, "Negative" aflatoxin content means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements and 25 ppb or less for non-edible quality categories, as determined by the Committee's sampling plan applicable to the respective grade categories.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts shall be identified by positive lot identification procedures prior to being shipped or otherwise disposed of. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot which has been inspected so that there can be no doubt that the peanuts are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attach-

ing a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service and to the Committee. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except those lots which have been reconstituted and/or commingled at the request of the receiver. All such reconstituted and/or commingled lots will no longer be considered positive lot identified and, therefore, no longer be eligible for indemnification or for appeal inspection. Handlers shall keep and maintain records of the quantities involved in each reconstituting and/or commingling procedure, whether in single or multiple lots, and such records shall be available to the Committee on request.

(e) *Reinspection.* Whenever the Committee has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Committee may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Transfer between plants.* Except as otherwise provided in §998.32 of the agreement, handlers may transfer peanuts to any handler or to domestic commercial storage without having such peanuts positive lot identified and certified as meeting quality requirements. Upon any transferred peanuts being disposed of for human consumption, they shall meet all the requirements applicable to such peanuts.

(g) *Loose shelled kernels, fall through and pickouts.* (1) Loose shelled kernels which do not ride screens with the following slot openings: Runner— $\frac{1}{64}$ x $\frac{3}{4}$ inch; Spanish and Valencia— $\frac{1}{54}$ x $\frac{3}{4}$ inch; Virginia— $\frac{1}{54}$ x 1 inch; and fall

through and pickouts shall be disposed of only by sale as domestic oil stock, by crushing, or as specified in paragraph (g)(3) or paragraph (m) of this section, hereinafter. For the purpose of this regulation: The term *non-edible quality peanuts* described in this paragraph means loose shelled kernels, fall through, and pickouts; the term *loose shelled kernels* means peanut kernels or portions of kernels completely free of their hulls, either as found in deliveries of farmers' stock peanuts or those which fail to ride the screens prescribed in paragraph (d)(1) of the Incoming Quality Regulation (§998.100); the term *fall through* has the same meaning as in paragraph (a) of this section; and the term *pickouts* means those peanuts removed during the final milling process at the picking table, by electronic equipment, or otherwise during the milling process.

(2) All loose shelled kernels, fall through, and pickouts shall be kept separate and apart from other milled peanuts that are to be shipped into edible channels. Such categories may be kept separate or be commingled in the same lot and shall be bagged in suitable new bags or clean used bags or placed in bulk containers acceptable to the Committee. Such peanuts shall be identified by positive lot identification procedures set forth in paragraph (d) but using a red tag, and such peanuts shall be inspected by the Federal or Federal-State Inspection Service and a certification made on each lot as to moisture and foreign material content. Such lot size, whether in bags or bulk, shall not exceed 200,000 pounds.

(3)(i) In addition to disposition outlets specified in paragraph (g)(1) of this section, such peanuts (loose shelled kernels, fall through, and pickouts) may be disposed of, with prior approval by the Committee for each such disposition, for use in research projects performed by institutions which are supported or sponsored with State or Federal funds. Fall through that has been sampled and determined negative as to aflatoxin content may be disposed of for use as wild-life feed or bait for rodents in labeled containers approved by the Committee. Also, fall through which has been chemically treated to prevent use for edible consumption

may be used for seed purposes. Each category of non-edible quality peanuts described in paragraph (g)(1) of this section and identified as prescribed in paragraph (g)(2) of this section may be exported in bulk or bags to countries other than Mexico or Canada pursuant to the provisions prescribed for such disposition in paragraph (l)(1) or (l)(2) of this section or they may be moved to another handler for such disposition. Sales or transfer of such peanuts, to exporters who are not handlers under the marketing agreement, shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Such peanuts may be disposed of to domestic crushing as "unrestricted" if they are certified negative as to aflatoxin content and may be commingled at the crusher with any other category of peanuts determined by paragraph (l)(1) of this section to be eligible for such "unrestricted" crushing. Non-edible quality peanuts described in paragraph (g)(1) of this section which have not been certified negative as to aflatoxin are not eligible for "unrestricted" crushing but may be disposed of to domestic crushing as "restricted" and may be commingled at the crusher with any other category of peanuts described in paragraph (l)(2) of this section. Such non-edible quality peanuts may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and apart from peanuts on which supervision is required. However, if non-edible quality peanuts described in paragraph (g)(1) of this section are exported or crushed in commingle with peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing on all categories of peanuts included in such commingling. All movement and disposition of such inedible quality peanuts shall be reported by the handler as prescribed by the Committee.

(ii) Meal produced from the crushing of loose shelled kernels, fall through, and pickouts, which have not been certified negative as to aflatoxin content,

and meal produced from the crushing of other "restricted" categories of peanuts listed in paragraph (l)(2) of this section, shall be prepared for disposition in specifically identified lots not exceeding 200,000 pounds. Handlers or crushers, at their own expense, shall cause each such lot of meal to be sampled, as prescribed by the Committee, by an inspector of the Federal or Federal-State Inspection Service and tested for aflatoxin in a laboratory approved by the Committee or by a USDA laboratory. The numerical test result of the chemical assay shall be shown on a certificate covering each lot of meal produced from "restricted" peanuts, and a copy of the certificate shall accompany each shipment or disposition. However, meal produced from the crushing of loose shelled kernels, fall through, and pickouts, which have been certified negative as to aflatoxin content, and meal produced from the crushing of other categories of peanuts determined by paragraph (l)(1) of this regulation to be eligible for "unrestricted" crushing, shall be exempt from the aflatoxin testing requirements.

(4) Notwithstanding any other provisions of this regulation or of the Incoming Quality Regulation (§ 998.100), a handler may transfer non-edible quality peanuts described in paragraph (g)(1) of this section to another plant within his own organization or transfer or sell such peanuts to a crusher for crushing. Sales or transfer of restricted peanuts to domestic crushers who are not handlers under the agreement shall be made only on the condition that they agree to comply with the terms of this paragraph (g) and all other applicable requirements of this regulation, including the reporting requirements.

(h) *Peanuts failing quality requirements.* (1) Handlers may sell to or contract with other handlers, for further handling, shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section. Transactions made in this manner shall be reported to the Committee by both buyer and seller on a form provided by the Committee. Further disposition of any such peanuts

acquired by handlers pursuant to paragraph (i) of § 998.100. Incoming quality regulation shall be regulated by the requirements specified heretofore or pursuant to paragraph (h)(3) hereinafter.

(2) Handlers may blanch or cause to have blanched shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of paragraph (a) of this section because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin: *Provided*, That such lots of peanuts contain not in excess of 10 percent total unshelled peanuts and damaged kernels or 10 percent foreign material. Prior to movement of such peanuts to a blancher, handlers shall report to the Committee, on a form furnished by the Committee, and receive authorization from the Committee for movement and blanching of each such lot. Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this section and be accompanied by an aflatoxin certificate determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition under the provisions of paragraph (g)(3) of the Outgoing Quality Regulation of the Peanut Marketing agreement (§ 998.200); or in the alternative, such residuals shall be positive lot identified by a Federal or Federal-State Inspection Service, and shall be disposed of by the blancher to handlers who are crushers or exporters, or to crushers who are not handlers but who are approved by the Committee, or to a Committee approved exporter. Blanching

under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(3) Handlers may dispose of positive lot identified shelled peanuts (which originated from "Segregation 1 peanuts") which fail to meet the requirements of paragraph (a) of the Outgoing Quality Regulation (§998.200): To domestic crushing, to export to countries other than Canada and Mexico, provided they meet fragmented requirements, to crushers who are not handlers but are approved by the Committee, to other handlers for crushing or fragmenting and exportation, or to domestic animal feed or to other handlers for such disposition, pursuant to paragraph (m) of the Outgoing Quality Regulation (§998.200). Handlers may also blanch, or cause to have blanched, such lots pursuant to paragraph (h)(2) of this section. Sales or transfer of such peanuts to exporters who are handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Each lot of such peanuts shall have been positive lot identified as prescribed in paragraph (d) of this section. Handlers may dispose of such peanuts as "unrestricted": *Provided*, That each lot has been sampled and assayed for aflatoxin as specified in paragraph (c) of this section and determined to be negative as to aflatoxin by the Committee. Handlers who have acquired any such unrestricted peanuts from another handler or from their own operations may commingle such peanuts with those from their own operations at the crusher, or during the fragmenting operation or after fragmenting for further disposition as "unrestricted" pursuant to the provisions of paragraph (l)(1) of this section. Lots of peanuts covered by the provisions of this paragraph (h)(3), which have not been assayed for aflatoxin content or which have been assayed and determined to be unwholesome as to aflatoxin by the Committee, are not eligible for disposition as "unrestricted." Therefore, the disposition of such peanuts to export or domestic

crushing shall be as "restricted." However, handlers who have acquired such restricted peanuts from another handler may commingle such peanuts with those from his own operations at the crusher, or during the fragmenting operation, or after fragmenting for further disposition as restricted pursuant to the provisions of paragraph (l)(2) of this section. Peanuts regulated by this paragraph (h)(3) may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and apart from peanuts on which supervision is required. However, if any such peanuts are commingled with peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing on all categories of peanuts included in such commingling. All movement and disposition of peanuts covered by the provisions of this paragraph shall be reported by the handler as prescribed by the Committee.

(4) Handlers may contract with Committee approved remillers for remilling shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of §998.200 Outgoing quality regulation: *Provided*, That such lots of peanuts contain not in excess of 10 percent total unshelled peanuts and damaged kernels or 10 percent fall through or 10 percent foreign material. Prior to movement of such peanuts under these provisions to a Committee approved remiller, handlers shall report to the Committee, on a form furnished by the Committee, and receive authorization from the Committee for movement and remilling of each such lot. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified and the title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets

specified in paragraph (a), and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition under the provisions of paragraph (g)(3) of the Outgoing Quality Regulation of the Peanut Marketing Agreement (§998.200); or in the alternative, such residuals shall be positive lot identified by a Federal or Federal-State Inspection Service, and shall be disposed of by the remiller to handlers who are crushers or exporters, or to crushers who are not handlers but who are approved by the Committee, or to a Committee approved exporter. Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

(i) *Seed peanuts and residuals from seed peanuts.* (1) Handlers who receive and custom shell for seed purposes farmers' stock peanuts (which have not been inspected and certified as meeting the Incoming Quality Regulation §998.100) shall hold and mill peanuts acquired as residuals from such operations separate and apart from peanuts acquired as Segregation 1 farmers' stock. Likewise, any such residuals received or acquired from a handler of non-handler, shall be held and milled separate and apart in the same manner. Residuals that meet requirements of the Outgoing Quality Regulation may be disposed of by sale to human consumption outlets or to another handler and any portion in positive identified lots not meeting such requirements: (a) May be handled and disposed of pursuant to the provisions of paragraph (h) of this section; or (2) shall be disposed of to domestic crushing or export pursuant to the provisions of paragraph (g) of this section.

(2) Peanuts which are used for seed purposes and which have been treated with chemicals causing them to be unfit for human consumption and animal feed, shall be exempt from the provisions of the Outgoing Quality Regulation.

(j) *Segregation 2 and 3 farmers' stock disposition.* (1) Handlers who have acquired Segregation 2 and 3 farmers' stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation (§998.100) may commingle such peanuts or keep them separate and apart. The Segregation 3 farmers' stock peanuts or commingled Segregation 2 and farmers' stock peanuts may be moved or disposed of in bags or bulk: To other handlers for shelling, fragmenting, or crushing, or to crushers who are not handlers but are approved by the Committee. Handlers may shell such peanuts and move or dispose of the shelled peanuts in bulk or bags: To other handlers for fragmenting or crushing, or to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided hereinafter the paragraph (l)(2) of this section for "restricted" export to countries other than Canada and Mexico, or for "restricted" domestic crushing. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for "fragmented" peanuts in paragraph (l)(1) of this section and shall be assayed for aflatoxin by a USDA laboratory or a laboratory approved by the Committee. Shelling, fragmenting, and crushing of Segregation 3 peanuts or commingled Segregation 2 and 3 peanuts shall be done only under the supervision of the Area Association and any such peanuts may be commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting for disposition to export or the further commingling and domestic crushing. All movement and disposition of Segregation 3 peanuts or commingled Segregation 2 and 3 peanuts and shelled or fragmented peanuts originating therefrom shall be reported

by the handler as prescribed by the Committee.

(2) Handlers who have acquired Segregation 2 farmers' stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation (§998.100) and held them separate and apart from Segregation 3 peanuts may commingle the Segregation 2 farmers' stock with Segregation 1 farmers' stock for disposition to domestic crushing or export as inedibles. The Segregation 2 farmers' stock peanuts or commingled Segregation 1 and 2 farmers' stock peanuts may be moved or disposed of in bulk or bags: To other handlers for shelling, fragmenting, or crushing, or to crushers who are not handlers but are approved by the Committee. Handlers may shell the Segregation 2 or commingled Segregation 1 and 2 peanuts and move or dispose of the shelled peanuts: To another handler for fragmenting or crushing; or to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided in paragraph (l)(1) of this section. Prior to exportation the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for fragmented peanuts also in paragraph (l)(1) of this section. If the shelled peanuts from Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts are held separate and apart from Segregation 3 peanuts and any restricted categories of shelled peanuts, no aflatoxin assay shall be required. Shelling, fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association. The shelled peanuts from Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts may be further commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting. All movement and disposition of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts and shelled or fragmented peanuts originating therefrom shall be reported

by the handler as prescribed by the Committee.

(3) Peanuts handled pursuant to the provisions of paragraphs (j)(1) and (2) of this section are exempt from §998.48 Assessments.

(k) *Segregation 1 farmers' stock disposition.* (1) In addition to milling (shelling, cleaning, etc.) Segregation 1 farmers' stock peanuts for disposition to human consumption or seed outlets, handlers may dispose of Segregation 1 farmers' stock peanuts to export or to other handlers for such disposition. All such dispositions to export shall be reported by the handler as requested by the Committee.

(2) In addition to the disposition outlets specified in paragraph (k)(1), of this section handlers may dispose of Segregation 1 farmers' stock peanuts in bags or bulk to other handlers for shelling, fragmenting or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. Handlers may commingle Segregation 1 farmers' stock peanuts with Segregation 2 farmers' stock peanuts or keep them separate and apart, and may shell such peanuts and move or dispose of the shelled peanuts in bulk or bags to other handlers for fragmenting or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. However, the shelling, fragmenting, and disposition of such Segregation 1 farmers' stock peanuts shall be done only under the supervision of the Committee and the Area Association and all peanuts handled under the provisions of this paragraph (k)(2), for disposition to export or domestic crushing shall be milled and disposed of pursuant to paragraph (j)(2) of this section in lieu of the provisions specified in paragraphs (a), (b), (c), (d), (g), (h), and (i) of this section. The movement and disposition of all peanuts handled under the provisions of this paragraph (k)(2), shall be reported by the handler as prescribed by the Committee.

(l) *Handling commingling, and disposition of shelled peanuts not meeting quality requirements for human consumption.* (1) The following categories of shelled peanuts may be disposed of to domestic

crushing or to export as “unrestricted”.

(i) The entire mill production of shelled peanuts from Segregation 1 farmers’ stock pursuant to paragraph (k)(2) of this section.

(ii) The entire mill production of shelled peanuts from Segregation 2, or commingled Segregation 1 and 2 farmers’ stocks pursuant to paragraph (j)(2) of this section.

(iii) Positive lot identified lots of shelled “peanuts failing quality requirements” determined negative as to aflatoxin pursuant to paragraph (h)(3) of this section.

(iv) Positive lot identified lots of loose shelled kernels, fall through, or pickouts determined negative as to aflatoxin pursuant to paragraphs (g)(1), (2), and (3) of this section.

(v) Positive lot identified lots of loose shelled kernels, fall through and pickouts commingled and determined negative as to aflatoxin pursuant to paragraphs (g)(2), and (3) of this section.

(vi) Positive lot identified lots of seed peanut residuals determined negative as to aflatoxin pursuant to paragraph (i) of this section.

Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts while fragmenting them or after they have been fragmented: With any other category of peanuts described in this paragraph, and with any category of “unrestricted” shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for disposition to export to countries other than Canada and Mexico. However, such peanuts, prior to exportation, shall be certified as meeting fragmented requirements. For the purpose of this regulation, the term *fragmented* means that not more than 30 percent of the peanuts shall be whole kernels that ride the following screens, by type: Spanish $15/64 \times 3/4$ inch slot; Runner $16/64 \times 3/4$ inch slot; and Virginia $15/64 \times 1$ inch slot. Sales or transfer of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and

are approved by the Committee to do such exporting. Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher: With any other category of peanuts described in this paragraph, and with any category of unrestricted shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling and the resultant meal may be disposed of without restriction. To be eligible for such unrestricted disposition (crushing or export), such peanuts, before commingling and after commingling shall be kept separate and apart from all “restricted” peanuts. Shelling fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association and if any shelled peanuts originating therefrom are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting and the commingling and crushing on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts described heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

(2) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as “restricted:”

(i) The entire mill production of shelled peanuts from Segregation 1 farmers’ stock pursuant to paragraph (k)(2) of the Outgoing Quality Regulation (§998.200).

(ii) The entire mill production of shelled peanuts from Segregation 2 or commingled Segregation 1 and 2 farmers’ stock pursuant to paragraph (j)(2) of this section.

(iii) The entire mill production of shelled peanuts from Segregation 3 or commingled Segregation 2 and 3 farmers’ stock pursuant to paragraph (j)(1) of this section.

(iv) Positive lot identified lots of shelled "peanuts failing quality requirements" pursuant to paragraph (h)(3) of this section.

(v) Positive lot identified lots of loose shelled kernels, fall through, or pickouts pursuant to paragraphs (g)(1), (2), and (3) of this section.

(vi) Positive lot identified lots of loose shelled kernels, fall through and pickouts commingled pursuant to paragraphs (g)(2), and (3) of this section.

(vii) Positive lot identified lots of seed peanut residuals pursuant to paragraph (i) of this section.

(viii) PAC indemnified peanuts.

Handlers who acquire, from other handlers, or from their own operations, any of the categories of shelled peanuts described heretofore in this paragraph (l)(2) of this section may commingle such peanuts while fragmenting them or after they have been fragmented with any other category of peanuts described in this paragraph and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling with disposition to export to countries other than Canada and Mexico as "restricted." Prior to such exportation, the peanuts shall be certified as meeting the fragmented requirements and shall be assayed for aflatoxin by a USDA laboratory or a laboratory approved by the Committee. The handler's "in-land" bill of lading and his invoice covering the shipment shall include the following statement: "The peanuts covered by this bill of lading (or invoice) are limited to crushing only and may contain alfaxoin." Sales or transfer of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Handlers who acquire, from other handlers or from their own operations, any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher with any other category of peanuts described in this paragraph (l)(2) of this section and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for "re-

stricted" domestic crushing. Meal produced from the crushing of "restricted" categories of peanuts described in this paragraph (l)(2) shall be tested and certified as to aflatoxin content pursuant to the requirements of paragraph (g)(3)(ii) of this section, applicable to such "restricted" categories of peanuts. Shelling, fragmenting, and crushing of Segregation 2 peanuts, Segregation 3 peanuts and the entire mill production of Segregation 1 peanuts handled pursuant to paragraph (k) of this section, shall be done only under supervision of the Area Association and if any of such categories of peanuts are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts described heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

(m) *Disposition of shelled peanuts for use as domestic animal feeds.* (1) Handlers may sell to or contract with other handlers, for further milling and/or processing for use in domestic animal feed, shelled peanuts which fail to meet requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation (§998.200). Lots of peanuts disposed of in this manner must be positive lot identified and accompanied by a valid grade inspection certificate. Transactions made in this manner shall be reported to the Committee by both the seller and the buyer, on a form provided by the Committee. Any such peanuts acquired by the receiving handler for disposition to use as domestic animals feed shall be held and milled separate and apart from peanuts destined to human consumption outlets, and further disposition shall be regulated as provided for in paragraph (m)(2) of this section, hereinafter.

(2) Handlers may dispose of, for use as domestic animal feeds, shelled peanuts which fail to meet requirements for disposition to human consumption

outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulations (§998.200): *Provided*, That each lot of peanuts so disposed of is treated with a coloring or dyeing solution approved and prescribed by the Committee; handled and shipped under positive lot identification procedures, (except for bulk loads, red tags shall be used and marked, "For Animal Feed-Not for Human Consumption"); assayed for aflatoxin and covered by a valid "negative" aflatoxin certificate; and inspected by the Federal or Federal-State Inspection Service and a certification made as to moisture, foreign material content, and that a minimum of 80 percent of the peanuts must show evidence of the dye or coloring agent, which is the Committee's requirement specified for dyeing or coloring. Each lot of inedible quality peanuts disposed of for use as domestic animal feed shall be reported to the Committee by the handler as prescribed by the Committee on a form provided by the Committee, and the handler's bill of lading and this invoice covering the shipment of each such lot shall include the following statement: "The peanuts covered by this bill of lading (or invoice) are for animal feed only and are not to be used for human consumption."

[53 FR 20291, June 3, 1988, as amended at 54 FR 25441, June 15, 1989; 54 FR 27271, June 28, 1989; 55 FR 30902, July 30, 1990; 55 FR 34512, Aug. 23, 1990; 56 FR 37647, Aug. 8, 1991; 57 FR 34063, Aug. 3, 1992; 58 FR 34867, June 30, 1993; 60 FR 36208, July 14, 1995]

§998.300 Terms and conditions of indemnification for 1996 and subsequent crop peanuts.

(a) For the purpose of paying indemnities on a uniform basis pursuant to §998.36 of the peanut marketing agreement, each handler shall promptly notify or arrange for the buyer to notify the Manager, Peanut Administrative Committee, of any lot of cleaned inshell or shelled peanuts, milled into one of the categories listed in paragraph (a) of the *Outgoing quality regulation* (7 CFR 998.200) or paragraph (j) of this section, on which the buyer, including the user division of a handler, has withheld usage due to a finding as to aflatoxin content as shown by the

results of further chemical assay, after shipment.

(b) To be eligible for indemnification, such a lot of peanuts shall have been inspected and certified as meeting the quality requirements for Indemnifiable Grades as specified in paragraph (a) of the *Outgoing quality regulation* (7 CFR 998.200), shall have met all other applicable regulations issued pursuant thereto, including the pretesting requirements in paragraphs (a) and (c) of the *Outgoing quality regulation* (7 CFR 998.200) and the lot identification shall have been maintained. If the Committee concludes, based on further assays, that the lot is so high in aflatoxin that it should be handled pursuant to this section, and such is concurred in by the Agricultural Marketing Service, the lot shall be accepted for indemnification.

(c) The indemnification payment shall be transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the *Outgoing quality regulation* (7 CFR 998.200).

(d) Claims for indemnification may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all of the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee shall pay such claims as it determines to be valid, to the extent of the equivalent indemnification value applicable to the peanuts used in the product so withheld. On products manufactured from edible quality grades of peanuts, such claims may be filed with the Committee no later than November 1 of the second year following the year in which the peanuts were produced.

(e) Notice of claims for indemnification on peanuts of the current crop

year shall be received by the Committee (by mail or legible facsimile) no later than the close of the business day on November 1, following the end of the crop year. For the purpose of this paragraph, “notice” shall be defined as the covering (executed and signed) Form PAC-5, accompanied by a copy of the applicable valid grade inspection certificate and the lab certificate showing the aflatoxin assay results which caused the request for rejection.

(f) Each handler shall include, directly or by reference, in the handler’s sales contract, the following provisions:

(1) Buyer shall give the Peanut Administrative Committee (Committee) office notice of any request made to the Federal or Federal-State Inspection Service for an “appeal” inspection for aflatoxin. Results of the “appeal” inspection will be reported by the Federal or Federal-State Inspection Service or other designated lab to Committee management. If the Committee management determines that the test results of the “appeal” sample show the lot to be high in aflatoxin, Committee management shall inform the buyer and handler of the results. In this case, the buyer may apply to reject the lot and return it to the handler by filing a rejection letter with Committee management. Upon a determination of the Committee, confirmed by the Agricultural Marketing Service, authorizing rejection, such peanuts, and title thereto, if passed to the buyer, shall be returned to the seller. Buyer must return the rejected lot to the seller within 45 days of the date on which Committee management informs buyer of the “appeal” sample test results, otherwise the buyer agrees that he/she forfeits the right to reject the lot and return it to the seller.

(2) Seller shall, prior to shipment of a lot of shelled peanuts covered by this sales contract, cause appropriate samples to be drawn by the Federal or Federal-State Inspection Service from such lot, shall cause the sample(s) to be sent to a USDA laboratory or if designated by the buyer, a laboratory listed on the most recent Committee list of approved laboratories to conduct such assay, for an aflatoxin assay and cause the laboratory, if other than the

buyer’s to send one copy of the results of the assay to the buyer. A portion of the costs of aflatoxin sampling and testing, as provided in §998.200(c)(3), shall be for the account of the buyer and the buyer agrees to pay such costs.

(g) Any handler who fails to include such provisions in his/her sales contract shall be ineligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts covered by the sales contract.

(h)(1) Any handler who fails to conform to the requirements of paragraph (g) of the *Incoming quality regulation* (7 CFR 998.100) shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee.

(2) Any handler who fails to comply with the requirements of paragraph (h)(1) or (h)(2) of the *Outgoing quality regulation* (7 CFR 998.200) shall be ineligible for any indemnification payments until such non-compliance is corrected to the satisfaction of the Committee.

(i) Any handler who fails to cause positive lot identification on any lot of peanuts to accurately reflect the crop year in which such peanuts were produced, pursuant to paragraph (d) of the *Outgoing quality regulation* (7 CFR 998.200), shall be ineligible for any indemnification payments until such non-compliance is corrected to the satisfaction of the Committee.

(j) Categories of cleaned inshell peanuts eligible for indemnification are as follows:

- (1) Cleaned inshell peanuts ¹
 - (i) U.S. Jumbos
 - (ii) U.S. Fancy Handpicks
 - (iii) Valencia-Roasting Stock ²
- (2) *Reserved.*

¹Eligible lots of cleaned inshell peanuts which are found, after shipment, to contain excessive aflatoxin, may be rejected to the handler. Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border reentry fees, etc.) from the handler’s plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be the extent of the indemnification payment.

²Inshell peanuts with not more than 25 percent having shells damaged by discoloration, which are cracked or broken, or both.

Agricultural Marketing Service, USDA

§ 999.1

(k) The indemnification value for peanuts indemnified shall be 35 cents per pound.

[61 FR 55549, Oct. 28, 1996]

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in the Finding Aids section of this volume.

ASSESSMENT RATES

§ 998.409 Assessment rate.

On and after July 1, 1996, an administrative assessment rate of \$0.70 per net ton of farmers' stock peanuts received or acquired other than from those described in §§ 998.31 (c) and (d) is established for handlers signatory to the agreement. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired.

[61 FR 35595, July 8, 1996]

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

Sec.

999.1 Regulation governing the importation of dates.

999.100 Regulation governing imports of walnuts.

999.200 Regulation governing the importation of prunes.

999.300 Regulation governing importation of raisins.

999.400 Regulation governing the importation of filberts.

999.500 Safeguard procedures for walnuts and certain dates exempt from grade, size, quality, and maturity requirements.

999.600 Regulation governing imports of peanuts.

AUTHORITY: 7 U.S.C. 601-674; and 7 U.S.C. 1445c-3.

§ 999.1 Regulation governing the importation of dates.

(a) *Definitions.* (1) *Dates in retail packages* means whole or pitted dates, other than dates prepared or preserved, wrapped or packaged for sale at retail.

(2) *Dates for packaging* means whole or pitted dates in bulk containers

which are to be repacked, in whole or part, in the United States as dates in retail packages.

(3) *Bulk container* means any container of dates which, together with the dates therein, weighs more than ten pounds.

(4) *Dates for processing* means any dates for use in a bakery, confectionery, or other product and includes dates coated with a substance materially altering their color.

(5) *Dates prepared or preserved* means dates processed into a confection or other product, dates coated with a substance materially altering their color, or dates prepared for incorporation into a product by chopping, slicing, or other processing which materially alters their form.

(6) *Person* means any individual, partnership, corporation, association, or other business unit.

(7) *Fruit and Vegetable Division* means the Fruit and Vegetable Division of the Consumer and Marketing Service, United States Department of Agriculture, Washington, DC 20250.

(8) *USDA inspector* means an inspector of the Processed Products Standardization and Inspection Branch, Fruit and Vegetable Division or any other duly authorized employee of the USDA.

(9) *Inspection certificate* means a written statement or memorandum report issued by a USDA inspector setting forth in addition to appropriate descriptive information the quality and condition of the product inspected, and in the case of imported dates, a statement of meeting or failing, as applicable, the U.S. import requirements under section 8e of the AMA Act of 1937.

(10) *Importation* means release from custody of United States Bureau of Customs.

(b) *Grade requirements.* (1) Except as provided in paragraph (d) of this section, the importation into the United States of any lot of dates for packaging or dates in retail packages is prohibited unless the dates are wholesome and unadulterated and meet the following grade requirements which are determined to be comparable to those imposed upon domestic dates handled pursuant to Order No. 987, as amended